

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining JOHN R. BAZA Division Director

May 16, 2011

CERTIFIED RETURN RECEIPT 7009 3410 0001 4203 1805

Darrell Boepple Black Gold Organic Fertilizer, Inc. 3802 47th Street Lubbock, Texas 79413

Subject: Proposed Assessment for State Cessation Order No. MC-2011-25-01, Black Gold

Organic Fertilizer, Inc., Rhae Rae Mine, S/019/0064, Grand County, Utah

Response Due By: 30 Days of Receipt

Dear Mr. Boepple:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the assessment officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division inspector, Tom Munson, on April 4, 2011. Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of \$506.00. The enclosed worksheet outlines how the civil penalty was assessed.

By these rules, any written information submitted by you or your agent within fifteen (15) days of receipt of the cessation order has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you. You may appeal the 'fact of the violation', the proposed civil penalty, or both. If you wish to informally appeal you should file a written request for an informal conference within thirty 30 days of receipt of this letter.



Page 2 of 5 Darrell Boepple S/019/0064 May 16, 2011

The informal conference will be conducted by a Division-appointed conference officer. The informal conference for the fact of the violation is distinct from the informal assessment conference regarding the proposed penalty. If you wish to review both the fact of the violation and proposed penalty assessment, you should file a written request for an assessment conference within thirty (30) days of receipt of this letter. In this case, the assessment conference will be scheduled immediately following the review of the fact of the violation.

If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and will be due and payable within thirty (30) days of the date of this proposed assessment (by June 15, 2011). Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,

Lynn Kunzler

Assessment Officer

LK:eb

Enclosure: Proposed assessment worksheet cc: Vicki Bailey, Accounting Vickie Southwick, Exec. Sec.

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WORKSHEET FOR ASSESSMENT OF PENALTIES DIVISION OF OIL, GAS & MINING Minerals Regulatory Program

| COMPANY / MINE Black Gold Organ CO # MC-2011-25-01 | nic Fertilizer, Inc. P | PERMIT <u>S/019/0064</u> |
|---|---------------------------------|-----------------------------|
| ASSESSMENT DATE May 16, 2011 | ASSESSMENT | OFFICER Lynn Kunzler |
| I. A. HISTORY (Max. 25 pts.) (R64) Are there previous violations, which a | | (3) years of today's date? |
| PREVIOUS VIOLATIONS MC-2008-25-01 | EFFECTIVE DATE October, 1, 2008 | POINTS (NOV=1pt, CO=5pt) 5 |
| | 7 | TOTAL HISTORY POINTS 5 |
| II. SERIOUSNESS (Max 45pts) (R64 | 47–7-103.2.12) | |

NOTE: For assignment of points in Parts II and III, the following apply:

Based on facts supplied by the inspector, the Assessment Officer will determine within each category
where the violation falls.

2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? <u>EVENT</u> (assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

- 1. What is the event the violated standard was designed to prevent? *Injury to the public and environmental harm.*
- 2. What is the probability of the occurrence of the event the a violated standard(s) were designed to prevent?

| PROBABILITY | POINT RANGE | |
|-------------|-------------|--|
| None | 0 | |
| Unlikely | 1-9 | |
| Likely | 10-19 | |
| Occurred | 20 | |

ASSIGN PROBABILITY OF OCCURRENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

***Potential hazard materials had been stored in an unsecured manner on site. The area is close to and visible from a major transportation route. It is considered likely that the public could have been exposed to the materials when they are not secured. Points assigned mid-point of the range

3. What is the extent of actual or potential damage? RANGE 0-25
In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 13

PROVIDE AN EXPLANATION OF POINTS:

***The violation had been discovered before actual damage occurred. However, had the event not been discovered in a timely manner, exposure to the public or environment by these materials creates a potential damage. Since the site had been vandalized, points are assigned at the mid point of the range.

B. ADMINISTRATIVE VIOLATIONS (Max 25pts) Does not apply to this violation.

TOTAL SERIOUSNESS POINTS (A or B) 22

III. <u>DEGREE OF FAULT</u> (Max 30 pts.) (R647-7-103.2.13)

A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence 0
Negligence 1-15
Greater Degree of Fault 16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 10

PROVIDE AN EXPLANATION OF POINTS:

***Operator had been cited in the past for this same type of violation, he should have been aware of the need to store potentially hazardous materials in a safe and secure manner. Since the operator had been cited in the past for the same nature of this violation, points were assigned above mid-point of the range.

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

Either A (easy abatement) or B (difficult abatement). (Does not apply to violations requiring no abatement measures)

A. EASY ABATEMENT - Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area? <u>NO</u>

Easy Abatement Situation

| 1. | Immediate Compliance | -11 to -20* | (Immediately following the issuance of the NOV |
|----|----------------------|-------------|---|
| 2. | Rapid Compliance | -1 to −10 | (Permittee used diligence to abate the violation) |
| 3. | Normal Compliance | 0 | (Operator complied within the abatement period |
| | | | required) |

^{*}Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

B. DIFFICULT ABATEMENT - Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance? YES?

Difficult Abatement Situation

| 4. Rapid Compliance -11 to -20 | (Permittee used diligence to abate the violation) |
|--------------------------------|---|
| 5. Normal Compliance -1 to -10 | (Operator complied within the abatement period |
| | required) |

6. Extended Compliance 0 (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)

ASSIGN GOOD FAITH POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** Operator immediately mobilized equipment necessary to abate the violation. Compliance was achieved within less than ½ the time allotted by the inspector to abate the violation. This is considered 'Rapid Compliance' and due to the apparent diligence to abate this violation, the maximum of 20 Good Faith Points is applied.

V. ASSESSMENT SUMMARY (R647-7-103.3)

| NOT | ICE OF VIOLATION # MC-2011-2 | 25-01 | |
|------|------------------------------|----------|--|
| I. | TOTAL HISTORY POINTS | _ 5 | |
| II. | TOTAL SERIOUSNESS POINTS | 28 | |
| III. | TOTAL NEGLIGENCE POINTS | 10 | |
| IV. | TOTAL GOOD FAITH POINTS | 20 | |
| | TOTAL ASSESSED POINTS | 23 | |
| | | | |
| | TOTAL ASSESSED FINE | \$506.00 | |